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PUBLIC LANDS NEWS BULLETIN #15: September 1, 2017

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In not proposing the outright revocation of any monuments Zinke may have taken away his critics' strongest legal argument against the review,

assuming President Trump follows his lead. That is, no President has ever rescinded a national monument under the Antiquities Act of 1906.

Nevertheless, environmentalists such as the Earthjustice environmental law firm indicated that they would file a lawsuit if President Trump attempted to reduce the size of any monument.

As a preliminary step Earthjustice filed a Freedom of Information Act demand with the Interior Department August 25 seeking all department communications on Zinke's review.

"As Secretary Zinke is keeping the American people in the dark about his proposal to strip national monument protections from millions acres of iconic wilderness and priceless cultural sites, we are turning to the Freedom of Information Act to compel him to do so," said Heidi McIntosh, Earthjustice's managing attorney in the Rocky Mountain region.

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Zinke's review was met with applause by the all-Republican Utah Congressional delegation, which has been championing for either a reduction in size of Bears Ears or a revocation of the Dec. 28, 2016, designation of the 1.35 million-acre monument by President Obama. And they have campaigned for a reduction in size of the 1.9 million-acres Grand Staircase Monument designated by President Clinton in 1996.

Said Sen. Orrin Hatch (R-Utah), "While Utah's national monuments are a prime example of Antiquities Act abuse, President Trump and Secretary Zinke are working to correct those past abuses and focus on the original meaning and intent of the law."

From the other side of the political fence Sen. Ron Wyden (D-Ore.) anticipates either a reduction in size of the 103,000-acre Cascade Siskiyou National Monument in Oregon or an expansion of consumptive land uses there, or both.

President Clinton designated an original 53,000-acre Cascade-Siskiyou monument in 2000 and President Obama expanded it by 50,000 acres January 12, for a total of 103,000 acres.

"This after-the-fact scheme to gouge away at the Cascade-Siskiyou monument insults the Oregon Way and the many Oregonians who spoke up in favor of protecting this pristine place for generations to come," said Wyden.

Sen. Tom Udall (D-N.M.) said he was disappointed in Zinke's recommendations on Rio Grande del Norte (242,000 acres and designated by President Obama in 2013) and Organ Mountains-Desert Peaks (496,000 acres and designated by Obama in 2014).

"New Mexicans have spoken loudly and clearly," said Udall. "They do not want to shrink our national monuments - and they deserve to know what the administration plans to do with the natural treasures they have worked for years to protect."

Zinke is expected to largely leave in place an 87,500-acre Katahdin Woods and Waters National Monument in Maine, despite the recommendation of Gov. Paul LePage (R-Me.) that it be revoked.

That expectation comes in part from a statement of monument supporter Rep. Chellie Pingree (R-Me.), who said she liked Zinke's review. She was quoted in the *Bangor Daily News* as saying she favored the secretary's "deliberative study of the monument, his recommendation to protect it."

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Ranking Senate Energy Committee Democrat Maria Cantwell (Wash.) agreed, "As I've said for months, the President does not have the legal authority to overturn these protections."

Before Zinke submitted his report to the White House, 16 western Republican Congressmen threw down an opposite gauntlet in the form of a House Western Caucus position paper. It recommended the complete rescission of ten monument designations and the modification of 13 more. The caucus would not change the boundaries of four monuments.

Among the 16 monuments the Republicans would do away with are Bears Ears, Grand Staircase, Cascades-Siskiyou and Katahdin. Not on their list for outright elimination are Rio Grande del Norte and Organ Mountains-Desert Peaks.

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The Antiquities Act of 1906 is fairly simple. The crucial provision says, "That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected. . ."

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Argued Cummings of the Antiquities Act, "The statute does not in terms authorize the President to abolish national monuments, and no other statute containing such authority has been suggested. If the President has such authority, therefore, it exists by implication." He added that no other implied authority existed.

The Congressional Research Service, keying on Cummings opinion, said, "No President has ever abolished or revoked a national monument proclamation, so the existence or scope of any such authority has not been tested in courts. However, some legal analyses since at least the 1930s have concluded that the Antiquities Act, by its terms, does not authorize the President to repeal proclamations, and that the President also lacks implied authority to do so."

But in late March the influential American Enterprise Institute (AEI) published its report that argues Trump has unlimited authority to redesignate national monuments.

Researchers John Yoo and Todd Gaziano argue that other legal precedent does allow Trump to reverse such national monument designations. Referring to the 1938 decision of Cummings, Yoo and Gaziano say, "We think this opinion is poorly reasoned; misconstrued a prior opinion, which came to the opposite result; and is inconsistent with constitutional, statutory, and case law governing the president's exercise of analogous grants of power. Based on a more careful legal analysis, we believe that a general discretionary revocation power exists."

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